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MAR 16 2009

In re Application :
Wai, et al. :
Application No. 10/526,275 : PATENT TERM ADJUSTMENT
Filed: March 1, 2005 :
Dkt. No.: 21162YP :

OFFICE OF PETITIONS

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)," filed November 7, 2008.

The application for patent term adjustment (PTA) under 37 CFR 1.705(b) is **HELD IN ABEYANCE**.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed August 21, 2008, indicated a patent term adjustment (PTA) to date of 592 days. The instant application for PTA was timely filed November 7, 2008, at the time of submission of the issue fee payment. Applicants argue that the application is entitled to additional adjustment under the provisions of 37 CFR 1.705(b).

The correct PTA at the time of the allowance is 592 days, as indicated in the Determination of Patent Term Adjustment.

Applicants herein do not contest the adjustment of 592 days accorded at the time of allowance.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date of the application. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within three years. See, 37 CFR 1.703(b).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the

patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Applicants are reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). See, also, *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).


Thus, the application is entitled to an adjustment of 592 days as of the time of allowance.

The required PTA application fee of \$200.00 has been charged to applicants' deposit account, as authorized.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

This application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.


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